

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60578

FILE: B-185767

DATE: March 1, 1976

MATTER OF: Trans-American Services, Inc.

98545

## DIGEST:

1. While it is not clear whether discussions with procuring activity prior to bid opening constituted protest against failure to give monthly meal estimates for option years in IFB for food services, if it is so considered, bid opening constituted adverse agency action, and since subsequent protest to GAO was not filed within 10 working days of bid opening, protest is untimely under Bid Protest Procedures, and not for consideration.
2. If discussion with agency is not considered protest, protest to GAO concerning alleged impropriety in solicitation filed after bid opening is untimely.

By mailgram dated January 19, 1976, Trans-American Services, Inc. (Trans-Am), protested invitation for bids (IFB) F04700-76-B-0020 issued by the Air Force Flight Test Center, Edwards Air Force Base, California, for food services. Trans-Am's basis for protest is that the IFB was deficient in that it showed no estimates for monthly meals for the first and second years of the option period. Trans-Am contends that this was inconsistent with prior Air Force IFB's for food services and gives the incumbent contractor a competitive advantage.

Trans-Am discussed this problem with the Air Force procurement office on December 15, 1975. Trans-Am reports that the Air Force informed it that the option year estimates were not given in the IFB because the Government could not estimate that far in advance. Bids were opened on December 22, 1975, and award was made on January 21, 1976.

Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), states in pertinent part:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section \* \* \*"

Section 20.2(b)(1) of our Bid Protest Procedures states in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.\* \* \*"

Since Trans-Am's protest is against an alleged impropriety apparent prior to bid opening, it had to be filed prior to bid opening in order to be considered. While it is not clear whether Trans-Am's December 15, 1975, conversation with Air Force officials constituted a protest, the Air Force's action in proceeding with bid opening on December 22, 1975, certainly constituted an adverse agency action if it is considered a protest. Consequently, since Trans-Am's mailgram of January 19, 1976, was not received within 10 working days of bid opening, it must be considered untimely. See B-178990, October 26, 1973, affirmed Kleen-Rite Janitorial Service, Inc., B-178990, February 19, 1974, 74-1 CPD 78; Southern Packaging and Storage Co., Inc., B-181249, June 7, 1974, 74-1 CPD 312, affirmed July 15, 1974, 75-2 CPD 28; Unitec, Inc., B-183343, May 27, 1975, 75-1 CPD 315.

On the other hand, if the December 15, 1975, conversation with the Air Force did not constitute a protest, Trans-Am's protest

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filed in our Office after bid opening is untimely under § 20.2(b)(1) of our Bid Protest Procedures, supra.

Therefore, the protest will not be considered on the merits.

*for Milton Fowler*  
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General Counsel